Remarks/Arguments

This amendment is in response to the Office Action dated March 29, 2004.

Claims 1-6, 11, 16, 24, 26 and 27 remain in this application. Claims 2-6 have been canceled to reduce the number of issues in the present application.

Before addressing the specific rejection of the claims in the Office Action Applicant wishes to address the improper interpretation used by the Examiner in determining the scope of the claims and the prior art. In particular, Applicant believes the interpretation used by the Examiner for the term "skive" is incorrect, improper in view of its use in the present application and has led to an unnecessary and erroneous office action rather than an allowance. As defined by the Examiner in the present office action "the term "skive" has been defined and considered by the examiner to mean any structure which forms an interlock or preventing movement of a filter away from the bottom or a mechanical structure which retains the filter within the well".

Applicant disagrees with this overly definition and believe it is unwarranted and unsupported by the specification and the claims.

To avoid any additional argument Applicant has limited the specific language of the claims to what a skive is, namely a continuous roll of inner wall material of the well. This is clearly supported by the specification of the application and does not render the claims a product by process claim as it is a physical structure.

A skive as has been stated previously and as is recognized in paragraph 30 of the last office action and paragraph 47 of the present office action is a continuous roll of inner wall material that is used to hold a filter piece or pieces in place with the well.

Claims 1-3 and 10 have been rejected under 35 USC 102(b) by US 5,715,741 (Gasser et al). Applicant disagrees.

Gasser et. al. uses an injection molded frame 4 around the edges of a filter base plate 2 so as to bond the frame to the pot wall 1. It relies upon a bond of a separately injection molded piece of plastic between the frame and the pot to hold the filter base in place. In all but one example it uses both a top as well as a bottom piece to surround the opening of the pot and secure the base in place. Only in Figure 11 is the bond above the bottom opening of the pot. Even there, the plastic still surrounds the filter plate on both sides (something that is not required or possible with the present claimed invention and something that occurs in all embodiments of the Gasser et.al. reference) and it further relies on undercuts formed in the wall of the pot into which injection molded plastic flows to form a secure hold.

This quite unlike the present invention which requires a continuous roll of inner wall material of the well to be positioned against the top of the filter to secure the filter against the bottom of the well.. Gasser et. al. fails to teach the interlock required by the claims.

As such Applicant believes the 102 rejection is improper as the reference fails to teach each and every claimed element of the present invention.

Claim 11 has been rejected under 35 USC 103(a) over Gasser et. al.('741) in view of Gasser et al (US 5,824,218) and Hawley's Condensed Chemical Dictionary.

Applicant disagrees with the assertion that it would have been obvious to use a plastic filter as claimed in lieu of the metal filter of the references. The references make it perfectly

clear that the filter must be made of metal. Gasser 218 clearly knew of plastics but did not suggest the use of them in the filter, only in the perforated disk downstream that is used to form the creamy head on the espresso. To suggest that one use a plastic filter as claimed by citing a reference that clearly requires the use of a metal filter is improper and contrary to what one of ordinary skill in the art would consider in reviewing the teaching and suggestions of the reference.

As it would not have been obvious in view of the cited references to use a plastic filter, it would also not have been obvious to use the specifically claimed plastics of the claim. Adding the teachings of Hawley's doesn't make up for the clear lack of any motivation for one in the art to consider using a plastic filter.

Claims 24 and 27 has been rejected under 35 USC 103(a) over Gasser et. al.('741) in view of Gasser et al (US 5,824,218). The cited combination of references fail to teach or suggest the use of a continuous roll of inner wall material as the mechanism for holding the filters in place.

Moreover, the references fail to teach or suggest the use of one or more filter pieces on top of each other in the well. At best they teach the use of one filter layer and a perforated disk layer downstream that is designed to create foam so as to form the creamy head of an expresso. The introduction of air into a filter system is typically unacceptable as the air can inmost instances create an air lock with the in the filter causing filtration to stop. Even if the two layer system of filter and foam generating disk were contemplated by the combination of references, they fail to teach or suggest the layers being held in by the continuous roll of inner wall material. as such they fail to obviate the present claims.

Claims 1, 5, 6, 10- 12, 16, 24, and 26 have been rejected under 35 USC 103 (a) over Zermani in view of DeSalvo. Applicant disagrees.

Zermani applies a heat seal to the bottom surface of the filter. It does not use a continuous roll of inner wall material on the top surface of the filter as claimed.

DeSalvo doesn't overcome the problems of Zermani for DeSalvo does not teach or suggest the formation of a continuous roll of material, but rather a simple crimp. It would not have been obvious from the cited combination to use a continuous roll of inner wall material to hold the top of a filter in place.

While Zermani may teach the use of several pieces of filter on top of each other, it states that only the bottom piece must be sealed, although it is preferable all are. Even then, as taught by Zermani, it is the bottom surfaces of the filter that are sealed to the bottom surface or each other, not the top surface as in the present claims.

Claim 27 has been rejected under 35 USC 103(a) over Gasser et al (741) in view of Gasser et al (218) and DeSalvo. It would not have been obvious to use continuous rolls of material between each filter layer from the cited combination. at best one might be able to form a crimp on top of the upper filter layer over a lower perforated foamer disk. it is not clear to Applicant how one could form more than one crimp sequentially from what is taught by the cited combination. If the examiner maintains this rejection, the examiner is asked to explain this position in greater detail with particular reference to the portions of the specifications of the references used to support that assumption.

Reconsideration and allowance of the remaining claims is respectfully requested in view of the foregoing amendment and remarks.

Respectfully submitted,

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